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NO. E-122878

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JEANNIE GRINNELL, \* IN THE DISTRICT COURT OF  
INDIVIDUALLY AND AS \*  
INDEPENDENT EXECUTRIX OF \*  
THE ESTATE OF WILEY \*  
GRINNELL, JR., WILEY AND \*  
FRANCES GRINNELL, SR., AND \*  
KEVIN GRINNELL \*  
\*  
VS. \* JEFFERSON COUNTY, TEXAS  
\*  
THE AMERICAN TOBACCO \*  
COMPANY, ET AL \* 172ND JUDICIAL DISTRICT  
\*\*\*\*\*

DEPOSITION OF

**John Grabowski, Ph.D.**

April 4, 1989  
The University of Texas Health Science Center  
1300 Moursund Avenue  
Houston, Texas

Reported by:

Joan E. Kregel  
Texas CSR No. 2668/Notary Public  
Nell McCallum & Associates  
2900 Smith, Suite 104  
Houston, Texas 77006  
(713) 523-3767

Taxable Cost: \$ \_\_\_\_\_  
Charged to: Roger S. McCabe  
State Bar No: 13335500  
Attorney for: Plaintiff

**COPY**

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1           The Oral Deposition of JOHN GRABOWSKI, PH.D., a  
2       witness called by the PLAINTIFF on April 4, 1989, at The  
3       University of Texas Health Science Center at Houston,  
4       1300 Moursund Avenue, Houston, Texas 77030, commencing  
5       at 2:15 p.m. before JOAN E. KREGEL, CSR No. 2668, a  
6       Certified Shorthand Reporter and Notary Public in and for  
7       the State of Texas, pursuant to Agreement, Notice, and  
8       the Texas Rules of Civil Procedure.

PROCEEDINGS

THE COURT REPORTER: For the record, would you state if the deposition is taken pursuant to Notice or by agreement of counsel, your agreements as to objections, and signature by the witness.

MR. McCABE: This deposition is by Notice and taken pursuant to the Texas Rules of Civil Procedure.

We'll inform you at the conclusion of this deposition whether or not the witness wants to sign it.

\* \* \* \* \*

1                                    JOHN GRABOWSKI, Ph.D.,

2                    having been first duly sworn, testified as follows:

3  
4                    EXAMINATION BY MR. McCABE:

5                    Q.        Please state your name for the record.

6                    A.        John Grabowski.

7                    Q.        Dr. Grabowski, will you please tell the Court  
8 of your formal education after high school.

9                    A.        Yes. I got my B.A. at the University of  
10 Minnesota, 1962 to 1966; I spent one year in graduate  
11 school at the Nashville Consortium of Vanderbilt, Peabody  
12 and whatever it was called; the JFK Center on Mental  
13 Retardation, that was '66, '67; and returned to the  
14 University of Minnesota and got my Ph.D. there in  
15 psychology in 1970; and did a two-year post doctoral  
16 fellowship sponsored by NIMH at the University of  
17 Minnesota 1970 to 1972.

18                    Q.        What type of employment background did you have  
19 following that fellowship?

20                    MR. SHEFFLER: Roger, let me enter an  
21 objection here. I think the scope of the  
22 deposition was limited to Dr. Grabowski and  
23 his work for the OSH and his publications,  
24 whatever they may be, for the OSH.

25                    Q.        (By Mr. McCabe) You may answer. What is your

1 employment background following your formal education?

2 A. I was on the faculty of the USC Medical School  
3 from '72 to '77. I was on the faculty of The University  
4 of Pennsylvania. That was to '80, I believe -- no, '83,  
5 actually. But I was with the National Institute on Drug  
6 Abuse which is part of the U. S. Public Health Services  
7 and the U. S. Health and Human Services. I was with  
8 them. Then I was with Louisiana State University. I  
9 spent a year with Tufts University Medical Center at New  
10 England Medical Center; and then I came here, The  
11 University of Texas Health Sciences Center, Department of  
12 Psychiatry and Behavioral Sciences.

13 Q. When was that?

14 A. When was that?

15 MR. SHEFFLER: Objection.

16 A. 1987.

17 Q. (By Mr. McCabe) What has been the nature of  
18 your writing for scientific purposes? What has been the  
19 magnitude of that work?

20 MR. SHEFFLER: Again, Roger, this is  
21 beyond the scope of this deposition; and I  
22 would like a continued objection to all  
23 these type of questions.

24 Q. (By Mr. McCabe) You may answer.

25 A. You're referring to quality, quantity, numbers,

1 diversity?

2 Q. The type of writings you've done, as well as  
3 the magnitude.

4 A. I've written in the areas of mental  
5 retardation; behavioral science; behavioral medicine; and  
6 the greatest amount in the area of substance abuse or  
7 drug abuse, if you wish, including tobacco and nicotine  
8 dependence. And it's gone on since whenever, late '60's.

9 Q. How many articles have you had published?

10 A. I'm not really sure. There are chapters. I've  
11 mostly done chapters and things like that and reviews,  
12 edited for a number of articles. Let's say 50. I just  
13 don't know. I don't count them.

14 Q. Dr. Grabowski, were you asked to contribute to  
15 the 1988 Surgeon General's Report dealing with addiction?

16 A. Yes.

17 Q. Who puts together the Surgeon General's Report?

18 A. The Office on Smoking and Health is the primary  
19 Public Health Service representative in putting that  
20 together.

21 Q. Have you worked for that agency?

22 A. No.

23 Q. When you were in Washington -- or in Baltimore,  
24 which agency did you work for?

25 A. It was in Washington, actually, Rockville,

1 Maryland, which is where Health and Human Services and  
2 some of the health institutes are. It includes Alcohol,  
3 Drug Abuse and Mental Health Administration which is  
4 composed of National Institute of Mental Health, National  
5 Institute of Alcohol Abuse and Alcoholism, and National  
6 Institute on Drug Abuse; and I worked for the National  
7 Institute on Drug Abuse.

8 Q. Who asked you to contribute to the 1988 Surgeon  
9 General's Report on addiction?

10 A. Dr. Jack Henningfield.

11 Q. Had you known Dr. Henningfield before he asked  
12 you to contribute?

13 A. Yes.

14 Q. How long had you known him?

15 A. Let's see. This was '87. Twenty years or,  
16 perhaps, 18 years. Something in that range. A Long  
17 time.

18 Q. When did you receive the request, if you know?

19 A. It was in the spring of 1987. Let's say March,  
20 April. I'm not sure precisely.

21 Q. What was Dr. Henningfield's title in  
22 relationship to that document?

23 A. He was one of three or four scientific editors  
24 of that volume.

25 Q. And what title do you have in relationship to



1       that report?

2           A.     I was a contributor, a writing contributor, to  
3       that. There are various levels of contribution that one  
4       makes.

5           Q.     When you received the request from Dr.  
6       Henningfield, did he indicate in an area where he wanted  
7       you to write?

8           A.     Yes.

9           Q.     And what was that area?

10          A.     It was conditioning factors in drug dependence  
11       with specific emphasis on its relation to nicotine  
12       tobacco dependence.

13          Q.     Did you prepare a submission for Dr.  
14       Henningfield?

15          A.     Yes, I did.

16          Q.     And was it a double spaced typewritten  
17       document?

18          A.     Yes, it was.

19          Q.     Approximately how long was it?

20          A.     About 20 pages, excluding the references.

21          Q.     How did you go about writing this document,  
22       Doctor?

23          A.     I had been asked to write it specifically based  
24       on research in areas of interest, things I had done in  
25       the past; and I confined myself to the areas that they

1 asked about, as best I could.

2 Q. Is the Surgeon General's Report put together in  
3 a manner that's different than most of the other writing  
4 you have done for scientific purposes?

5 A. Well, it is different from typical scientific  
6 and academic writing, yes.

7 Q. In what way?

8 A. It is like some of the things that I had done  
9 when I was with the National Institute on Drug Abuse and  
10 with the health institutes.

11 Q. In what way is it different?

12 A. It is different in that there is no room for  
13 speculation, if you will. You were given explicit  
14 instructions to adhere to published data and so on.

15 Q. Do you give opinions in the writings that you  
16 do for the Surgeon General's Report?

17 A. No, you do not.

18 Q. In what manner do you support your statements?

19 A. You cite literature references.

20 Q. Is the document intended to be a statement of  
21 factual matter?

22 A. Yes, it is intended to be factual content  
23 without discussion by the specific however many  
24 contributors there were. That is not the role that  
25 you're given.

1 Q. How many contributing editors were there or  
2 contributors?

3 A. Contributors. I don't know. It's in here. I  
4 would expect there were in the tens, 20, 30, something  
5 like that. I didn't count them up.

6 Q. Do you recall how long it took you to write  
7 this submission, this piece?

8 A. Off and on over the course of a month.

9 Q. Where were you living and working when you  
10 received the request?

11 A. I was in Boston at New England Medical Center.

12 Q. And where were you when you submitted your  
13 piece?

14 A. I was here. I should note I was commuting  
15 between the two places when I did this. When I was  
16 here -- I actually started writing it here and prepared  
17 it over the -- after I started here at UT and did it over  
18 the next month, as I said, and worked on it, looked at  
19 it, revised it.

20 Q. Now, Dr. Grabowski, did you retain what you  
21 submitted to the Surgeon General's Report?

22 A. Do I have a copy?

23 Q. Yes.

24 A. Yes.

25 Q. Has that previously been furnished to me?

1 A. Yes.

2 Q. And at the request of the defendants in this  
3 case? Is that what I told you I wanted?

4 A. Yes. I, frankly, don't recall. I think it was  
5 either -- yes. It was for them, that's right, I do  
6 recall. And I had been a little slow in getting it to  
7 you, and there were some problems with that.

8 Q. How long ago was that you gave it to me?

9 A. I think it was back in the fall of '88.

10 Q. Do you have any other documentation of what you  
11 submitted to the Surgeon General Scientific Committee  
12 other than what you've already given to the defendant?

13 A. No.

14 Q. Doctor, Did you ever receive any constructive  
15 criticism of your work by other scientific contributors?

16 A. That wasn't really one of the privileges one  
17 had. First of all, you were asked to write specifically  
18 about that which you knew; and it was assumed you would  
19 write that and then confine yourself. And most of that  
20 had been criticized in the past because it was, in that  
21 sense, duplication because it was, for the most part,  
22 published in one form or another. So, it was, in that  
23 sense, a reiteration and a bringing together.

24 Q. Did you include in your piece any opinions that  
25 were not supported by works in the public domain?

1 A. No.

2 Q. Did you footnote each of your sentences?

3 A. Not each sentence, no.

4 Q. Each thought?

5 A. Concepts, thoughts, content, yes. For a  
6 20-page article or piece or whatever it is, report,  
7 segment of a report, it's reasonably well documented.  
8 And it refers to much larger works that are also  
9 scrupulously documented.

10 Q. Did you cite those works in your paper?

11 A. Yes.

12 Q. Did you rely upon anything that was not in the  
13 literature of the public domain in writing that piece?

14 A. No.

15 Q. What is the process of putting together the  
16 Surgeon General's Report after the contributing editors  
17 have made their contribution?

18 A. I have excessive knowledge -- or knowledge in  
19 excess of what I would have simply being a contributor  
20 having worked on some of these in the past when I was  
21 with the institutes.

22 Q. So, you've worked on other Surgeon General  
23 Reports?

24 A. Yes. One sends material, the contributors, the  
25 writers, sends material to the editors. The editors then

1 send it to various subcommittees that have been formed of  
2 people with special expertise or special interest, and  
3 they get contributions or thoughts. The editors bring it  
4 together as a composite of all the contributions of all  
5 of these people both internal to government, external to  
6 government.

7 After the initial iteration that the editors  
8 put together, it is sent out to another list of people  
9 with various interests and expertise who are actually  
10 listed -- all the participants are listed in the front of  
11 the Surgeon General's Report. Some of those are internal  
12 government people who were involved at various stages.  
13 Some are people who are in various universities and other  
14 institutions around the country.

15 After their commentary the material is then  
16 brought together by the editors again and they meet with  
17 whoever the reigning head of the Office on Smoking and  
18 Health is at the time and put together a semi-final  
19 rendition which is then published but published with the  
20 caveat that there may be corrections. It is not  
21 published in its final form. In fact, that's what I  
22 think we all have copies of.

23 There is then after a period of about -- after  
24 its announcement and its delivery to the public, if you  
25 will, and to the Congress -- because essentially it's a

1 report to Congress -- there are corrections and additions  
2 and editing, minor typographical things. As I recall,  
3 there was never anything substantive. It was almost as  
4 though it was just a supplemental editorial -- specific  
5 editorial reading for typographical errors, and then they  
6 put out something that is actually called the final  
7 version.

8 Q. Before the book is announced and delivered to  
9 the Congress, is there a review period of the work of the  
10 scientific editors? Is there some review process?

11 A. Yes. All of those -- as I said, there are  
12 people internal to government who are listed in there who  
13 look through for content. I had done that some myself in  
14 the past for other reports. There is an official process  
15 where when this document is more or less whole they send  
16 it out to these people around the country.

17 Q. Did you have any connection with the 1988  
18 Surgeon General's Report on addiction when it was sent  
19 out for comment?

20 A. Yes, I did.

21 Q. What was that?

22 A. The report as a whole was sent to Charles  
23 LeMaistre who is head of M. D. Anderson. And I happened,  
24 in addition to my appointment in psychiatry and  
25 behavioral sciences, I have an appointment in the

1 Department of Prevention in the M. D. Anderson Cancer  
2 Center. So, my chairman there at that location across  
3 the street is Guy Newell, who is a former head of NCI,  
4 National Cancer Institute.

5 LeMaistre sent the report to Newell for  
6 distribution of portions to people who might be able to  
7 make reasonable commentary; and then all of these were  
8 brought together, I assume, and sent back to the  
9 scientific editors who are Henningfield, Benowitz, Lando,  
10 and Grunberg.

11 Q. Did you participate in critiquing or commenting  
12 upon a portion of the report sent to you?

13 A. Yes. I commented primarily on the treatment  
14 section, as I recall.

15 Q. Were you given your own work to comment on?

16 A. No. It happened not to be in the part that I  
17 looked at.

18 Q. Do you --

19 A. Or if it was, it was well camouflaged.

20 Q. Where did your original submission get printed  
21 in the Surgeon General's Report?

22 A. A portion of it did.

23 Q. And where is that located?

24 A. It's somewhere in the vicinity of Page 305 to  
25 306.



1 Q. And it dealt with condition?

2 A. It dealt with conditioning and stimulus factors  
3 in drug dependence.

4 Q. And are there four or five or six pages  
5 following that?

6 A. I believe so, yes, plus references somewhere.

7 Q. And when you wrote your comments concerning the  
8 work that was given to you to comment on, did you retain  
9 any of those comments?

10 A. No, I did not. You just don't do that in the  
11 standard editorial process.

12 Q. And you have, at my request, searched to  
13 determine if you have anything from that?

14 A. Actually, I did it before you requested it.  
15 When I was asked to be present at this deposition today,  
16 yesterday I went through all my files just to see what I  
17 did have in relation to that; and I do not have any of  
18 those material. I, in fact, did what one was supposed to  
19 do with respect to editorial work of that sort: I  
20 delivered it all back to them.

21 Q. Do you have memory recollection of having any  
22 opinions to express concerning the piece that you were  
23 given?

24 A. Yes.

25 Q. And what was the opinions that you recall

1 giving?

2 A. Well, what I did was I went through the  
3 material. I dictated my summary. I read through it page  
4 by page. Much of it was just editorial comment editing,  
5 things like sentence structure and typographical errors  
6 and, perhaps, improper use of terms and plurals and  
7 singular and things like that. I did that level of  
8 reading.

9 I did content or conceptual reading, as well;  
10 and I don't recall the length of my report. I think it  
11 was probably 10 or 15 or 20 pages of per line or  
12 paragraph type commentary that I then sent back. As I  
13 said, most of it was just editorial work.

14 Q. Was any of it substantive?

15 A. Yes.

16 Q. What was the substantive part?

17 A. There was a section or concept or point that  
18 was used in this material with which I felt uncomfortable  
19 in terms of its substance. And I recall it as the  
20 singular -- of the material I read, it was the singular  
21 outstanding point that really did not have sufficient  
22 support in the literature; and I thought that it would  
23 weaken the report as a factual document if it was  
24 included.

25 Q. And did you point that out in your report to

1 Dr. LeMaistre?

2 A. Yes, I did.

3 Q. Do you know if that was carried forward to the  
4 scientific editors?

5 A. My understanding was that my comments on that  
6 were significant.

7 Q. And was the final Surgeon General's Report  
8 published without reference to the materials that you  
9 felt were not sufficiently factually supported at the  
10 time of the writing?

11 A. It included reference to the two articles, but  
12 it did not include the statements which they were  
13 intended to support. The two articles were intended to  
14 support a major finding, if you will. And, as I said, I  
15 didn't feel that they supported that and I pointed that  
16 out and in the end that major statement as a summary  
17 statement was excluded.

18 Q. Was there anything else about your work as a  
19 reviewing editor of the Surgeon General's Report  
20 concerning addiction that was substantive?

21 A. Everything I do is substantive. So, I'm sure  
22 there was something. I don't recall anything else that  
23 was really -- that was a point that stuck out and it was  
24 there and I recall it.

25 The other things were, as I said, primarily

1 modest changes in content and style and organization,  
2 some things about organization or pointing out redundancy  
3 because it is a characteristic of the report, because it  
4 is put together, first of all, by however many 10 or 20  
5 or 30 or 40 or 50 contributors and then edited by many  
6 people, it sometimes gets redundant. And you note those  
7 relationships between various pages.

8 It was, considering how it was put together and  
9 the difficulty involved in adherence to factor, that  
10 first iteration or the first iteration that I saw  
11 certainly was remarkably well done.

12 Q. Doctor, we have listed you as an expert witness  
13 in litigation which you're now testifying concerning the  
14 subject of addiction.

15 In forming your opinions concerning this case,  
16 have you relied upon any unpublished data that may have  
17 been generated in the attempt to put together the 1988  
18 Surgeon General's Report?

19 A. No.

20 Q. Are you familiar from your period in government  
21 service with the method of providing information under  
22 the Freedom of Information Act?

23 A. Yes.

24 MR. SHEFFLER: Objection.

25 Q. (By Mr. McCabe) Are you familiar with any

1 requirement that when a government agency receives a  
2 Freedom of Information Act question that they respond to  
3 it within a given number of days?

4 MR. SHEFFLER: Objection, both to  
5 leading nature and also to the unqualified  
6 nature of this testimony.

7 Q. (By Mr. McCabe) You may answer that.

8 A. Yes, I'm familiar with it. And I, on occasion  
9 when I worked for the Federal Government, had to respond  
10 to such requests.

11 Q. What is the time limitation with which you must  
12 make initial response?

13 MR. SHEFFLER: Objection.

14 A. As I recall it, it was 10 days.

15 Q. (By Mr. McCabe) What is required at the end of  
16 10 days?

17 A. You are required to provide to the requester a  
18 response indicating that either, if possible, the full  
19 document and material or some indication that you are, in  
20 fact, pursuing that; that you are going to provide the  
21 information and some description of how you might do  
22 that.

23 Q. When data of a nature such as the documents  
24 that went into the drafting of the report, the magnitude  
25 of the Surgeon General's Report are requested, have you

1 had any familiarity when documents of that magnitude are  
2 requested?

3 MR. SHEFFLER: Objection. Requested by  
4 who?

5 Q. (By Mr. McCabe) You may answer.

6 MR. SHEFFLER: I object on the basis of  
7 speculation as well as leading and on the  
8 basis that the witness does not have any  
9 qualifications established to let him answer  
10 such a question.

11 Q. (By Mr. McCabe) You may answer.

12 A. Could you restate the question, please?

13 Q. I'll restate it for you, Doctor.

14 Have you any familiarity or experience with  
15 responding to requests under the Freedom of Information  
16 Act when a large number of documents are requested?

17 MR. SHEFFLER: Objection. Same basis as  
18 before stated.

19 A. No one has defined "large."

20 Q. (By Mr. McCabe) Such as the documents  
21 underlying the Surgeon General's Report.

22 MR. SHEFFLER: Objection.

23 A. I have responded to things of lesser magnitude  
24 but involving disparate information; and it takes some  
25 time to get it together, substantial time. In some

1 cases, in my experience, many months in the sorts of  
2 things that I was dealing with.

3 Q. (By Mr. McCabe) If a person were to request all  
4 underlying documents that were generated in the process  
5 of preparing the 1988 Surgeon General's Report on  
6 addiction and if that request would be fully and  
7 completely responded to by each and every person and  
8 agency and institution which had such documents, would  
9 any of those documents which were produced be documents  
10 upon which you rely in forming your opinions in this case  
11 which are not already published?

12 MR. SHEFFLER: Objection on the basis  
13 it's speculation, on the basis of the lack  
14 of qualification, and also on the basis of  
15 relevancy.

16 Q. (By Mr. McCabe) You may answer.

17 A. I'm sorry. Can you do it again?

18 MR. ALLEN: You just want to read it  
19 back? That way we won't have to object  
20 again.

21 Q. (By Mr. McCabe) In the event someone were to  
22 request all documents that were generated in the course  
23 of the preparation of the 1988 Surgeon General's Report  
24 on addiction from whoever might have those documents --  
25 be it a governmental agency or an individual -- and if

1       these documents were produced in toto, would any of those  
2       documents be documents upon which you relied in forming  
3       your opinions in this case that were not separately  
4       published?

5                   MR. SHEFFLER:  Objection for the same  
6                   above-stated reasons.

7           A.     To recoup all of the materials that everyone  
8       used in the preparation of that document would be a major  
9       undertaking.  I simply -- well, the first time around it  
10      took them about a year and a half to put it together, I  
11      guess.  And the reality is that since it's a documented  
12      fact based on the public and published literature, it's  
13      there.  I mean, it's available in the published  
14      literature.  If I answered your question properly.

15          Q.     (By Mr. McCabe) I think my question was:  Was  
16      there anything that was --

17                   MR. SHEFFLER:  I object to the lack  
18                   of --

19          Q.     (By Mr. McCabe) -- published that you did  
20      not --

21                   THE COURT REPORTER:  Wait.  One at a  
22                   time, please.

23                   MR. ALLEN:  We need to get an objection  
24                   on the record.

25                   MR. SHEFFLER:  I object to the lack of



1                   responsiveness, the answer.

2                   THE COURT REPORTER: Your question,  
3                   please.

4                   MR. SHEFFLER: There wasn't a question.

5                   Q.     (By Mr. McCabe) You may go ahead, Doctor, with  
6                   your additional comment.

7                   MR. SHEFFLER: Do you have his question?  
8                   Let's have a question.

9                   Q.     (By Mr. McCabe) You may finish your answer,  
10                  Doctor.

11                  A.     And everything -- I'm sorry. Everything was in  
12                  the record. I think that was the point you were getting  
13                  at.

14                  MR. SHEFFLER: Again, object to the last  
15                  part of "and everything being in the record"  
16                  as also non-responsive to any question.

17                  A.     The Scientific Record, if you will, is what I'm  
18                  referring to.

19                  Q.     (By Mr. McCabe) My question to you, Dr.  
20                  Grabowski, is: Do you know of any document upon which  
21                  you have relied in forming your opinions that is not in  
22                  the public domain?

23                  A.     No.

24                  MR. SHEFFLER: Asked and answered.

25                  MR. McCABE: No further questions.

1  
2 EXAMINATION BY MR. SHEFFLER:

3 Q. Doctor, are you an expert on the procedures and  
4 the recording procedures and protocols of the Office on  
5 Smoking and Health with respect to the publication of the  
6 Surgeon General's Report?

7 A. Could you define that for me, what an expert  
8 would be?

9 Q. You've given testimony here today about what  
10 the scope of the materials that the Office on Smoking and  
11 Health have looked at in preparation of the Surgeon  
12 General's Report; is that correct?

13 A. Yes.

14 Q. And you consider yourself to have some  
15 knowledge and expertise with that?

16 A. I certainly do.

17 Q. Doctor, can you tell us what is the scope of  
18 the materials currently housed at the Office on Smoking  
19 and Health with respect to peer review materials?

20 A. Scope of the articles housed?

21 Q. Do you know how much of the literature that was  
22 generated in peer review of the report on nicotine  
23 addiction is currently housed at the Office on Smoking  
24 and Health?

25 A. All the contributing documents, is that the

1 question?

2 Q. Yes. Do you know how many documents are there?

3 A. I have no idea.

4 Q. Doctor --

5 A. Assuming I understood your question.

6 Q. Do you have knowledge of how many different  
7 peer review persons were involved in the critique of the  
8 contributions made by persons such as yourself?

9 A. I would expect -- first of all, there is a list  
10 on page -- in the preparatory material for this in the  
11 introduction that gives the names of everyone, everyone  
12 who was officially asked to review the material. And  
13 that number is perhaps 30 or 40, but I don't know. I  
14 haven't added them up.

15 Second, in each case I assume that, as is  
16 typical, that each one of those people asked other people  
17 to look at material as well. So, I have no idea about  
18 the total number of folks involved.

19 Q. Do you have any idea, Doctor, about how those  
20 review materials are organized at the Office on Smoking  
21 and Health?

22 A. I need some clarification. Are you asking me  
23 about the filing cabinets or are you asking me --

24 Q. That's right. Do you know if they have a  
25 filing cabinet named Dr. John Grabowski?

1           A.     I would expect that -- I, frankly, don't know.  
2     I don't know.

3           Q.     They very well may have a file with John  
4     Grabowski's material submitted to the Office on Smoking  
5     and Health; is that right?

6           A.     What I do know is how I did things in the past.

7           Q.     Doctor, that's fine. I'm asking about the 1988  
8     Surgeon General's Report on nicotine addiction.

9                     Do you know, as you sit here today, whether the  
10    Office on Smoking and Health has a file sitting in its  
11    file cabinet labeled John Grabowski?

12          A.     I don't know that.

13          Q.     When did you first have a conversation with Mr.  
14    McCabe or any of the lawyers for the plaintiff in this  
15    action with respect to your submissions to the Office on  
16    Smoking and Health?

17          A.     Sometime in '87. Late '87, I would imagine.

18          Q.     Do you recall what prompted that conversation?

19          A.     He might well have asked me about my  
20    background, and I might have mentioned that. That would  
21    be the logical origin. I don't recall.

22          Q.     At that time did you tell him you, in fact, had  
23    written a portion of the report entitled "Nicotine  
24    Addiction?"

25          A.     That I had submitted material, yes.

1 Q. Did you give him a copy of that material then?

2 A. I don't think so.

3 Q. Did he ask for it?

4 A. I don't recall that he did. As a matter of  
5 fact, as I recall, the first time I was asked for it was  
6 in response to your request to him.

7 Q. And, Doctor, are you referring to the American  
8 Tobacco Company's request for production of documents  
9 when you say my request to him?

10 A. The one dated yesterday?

11 MR. SHEFFLER: Can we have this marked.

12 A. No, that's not it. The request was in about  
13 November of '88.

14 Q. (By Mr. Sheffler) Mr. McCabe told you that in  
15 November of '88 the defendants wanted a copy of your  
16 submission to the Surgeon General; is that correct?

17 A. I believe that at that time I was asked to  
18 submit material, and I believe also that was one of the  
19 pieces of material that I submitted. There was a request  
20 for one other -- one other piece.

21 Q. Do you recall what that was?

22 A. Yes. It was a presentation I gave to the  
23 American Psychological Association meeting in New York in  
24 '88.

25 Q. Did you tell Mr. McCabe at that time that your

1 testimony in this case and your opinions in this case  
2 relied, in whole or in part, on those materials?

3 A. No.

4 Q. Will your testimony in this case rely or do  
5 your opinions in this case rely, in whole or in part, on  
6 that material?

7 A. On "that material" being?

8 Q. Being the material that you just described,  
9 your --

10 A. I submitted a list of things that I had written  
11 in the past. As I recall, there was a submission that  
12 included a series of citations; and it was just a summary  
13 statement. It was, perhaps, a four-page -- it looked  
14 like a letter, actually, as I recall. It had a list of,  
15 perhaps, four or five or ten citations.

16 I mean, this has been going on, as you recall,  
17 for a long time, several years. And since then the  
18 report "Health Consequences of Smoking: Nicotine  
19 Addiction; A Report of the Surgeon General" has come out.  
20 I believe that got added on at some point. And, further,  
21 there was an article, just a review article, a summary  
22 article by Dr. Benowitz, which I recall mentioning as  
23 relevant and interesting. And that was published in  
24 either late '88 -- I believe early '89. These things  
25 have been accumulating over time because of the duration

1 of this process.

2 MR. SHEFFLER: Let's mark this then.

3  
4 (Defendants' Exhibit No. 1 marked)

5  
6 Q. (By Mr. Sheffler) Doctor, let me show you a  
7 letter that's addressed to Roger S. McCabe. I believe  
8 it's signed by John Grabowski. Is this the document  
9 you're referring to that contains the list of the  
10 citations that you're relying upon for your opinion in  
11 this case?

12 A. This was an early rendition reiteration, yes.

13 Q. So, Exhibit 1 --

14 A. It is not complete.

15 Q. Is Defense Exhibit 1 in part your opinion that  
16 you would tend to render in this case?

17 A. You asked me if that was a letter I submitted.  
18 Yes, it was a letter.

19 Q. Now I'm asking you is this letter which is  
20 marked as Defendants' Exhibit 1 --

21 A. Would you like me to read it?

22 Q. -- is that in part the opinion you tend to  
23 render in this case?

24 MR. McCABE: We instruct the doctor not  
25 to answer this or any additional questions

1                   that deal with his opinions in this case.

2                   This deposition is my deposition; and it  
3                   is limited in scope to the Surgeon General's  
4                   Report, his background, his knowledge, and  
5                   the Freedom of Information Act request. We  
6                   will tender him at a later date for his  
7                   opinions.

8                   MR. SHEFFLER: Roger, I couldn't agree  
9                   more with you; and I'm not going to ask him  
10                  the content of his opinion. I really want  
11                  to establish for the record that one of the  
12                  bases for his opinion is, indeed, the  
13                  material he submitted to the Surgeon  
14                  General's Report.

15                  MR. McCABE: I will permit him to answer  
16                  that question but not to identify, restrict,  
17                  or expand upon his written report containing  
18                  his opinions.

19                  A.     First of all, this does not include everything  
20                  that was in the material that was submitted to the  
21                  Surgeon General's Report, number one, although I do refer  
22                  to that. Second, I did, in fact, submit a copy of that  
23                  material to someone. I assume you have that.

24                  Q.     (By Mr. Sheffler) Doctor, do you intend to rely  
25                  on the material that you submitted to the Surgeon



1 General?

2 A. Portions of that material.

3 Q. Do you have that material with you today?

4 A. I believe so.

5 Q. Did you bring that material with you today at  
6 our request?

7 A. As of yesterday, yes.

8 MR. SHEFFLER: Let's mark this as  
9 Defense 2.

10  
11 (Defendants' Exhibit No. 2 marked)

12  
13 Q. (By Mr. Sheffler) Let me show you a document,  
14 Doctor, that's been marked for identification as  
15 Defendants' Number 2 and ask you if you have ever seen a  
16 copy of that before.

17 A. Yes.

18 Q. When did you first see it?

19 A. This morning at 10:30.

20 Q. Doctor, that document requests certain papers  
21 from you. Did you review your files to see if you had  
22 the documents requested in there?

23 A. I reviewed my files thoroughly yesterday  
24 afternoon. I reviewed my computer yesterday afternoon  
25 and today.

1           Q.     The first request for production is for all  
2 documents constituting, in whole or in part, the material  
3 John Grabowski prepared for the 1988 Surgeon General  
4 Report.

5                     Do you have with you today all documents  
6 constituting, in whole or in part, the material you  
7 prepared for the Surgeon General's Report?

8           A.     Are you asking for the material that I wrote  
9 for that report?

10          Q.     I'm asking for all the material you prepared --

11          A.     Yes, I have that.

12          Q.     -- in whole or in part.

13          A.     I have that with me here. I have it.

14          Q.     May I see it?

15          A.     (Witness complies)

16                     MR. SHEFFLER: This will be Exhibit  
17 Number 3. For the record, it's a paper  
18 entitled "Conditioning Factors as  
19 Determinants of Relapse to Tobacco Use  
20 prepared by John Grabowski for Surgeon  
21 General's Report on Tobacco Use and Health:  
22 Nicotine Addiction."

23  
24                     (Defendants' Exhibit No. 3 marked)

25

1           Q.     (By Mr. Sheffler) Doctor, let me show you  
2 Exhibit Number 3. Again, is that the complete document  
3 that you submitted to the Surgeon General?

4           A.     That's the complete document.

5           Q.     Was there a cover letter with that document?

6           A.     There may have been. There may not have been.  
7 I do not have a copy. As I said, I did, in fact, go  
8 through all my files. I was unable to find such a  
9 letter. I can assure you it would have been a very brief  
10 letter, in any case.

11          Q.     Now, Doctor, Request Number 1 asks for all  
12 documents constituting, in whole or in part, the material  
13 prepared. Are you excluding from that Request Number 1  
14 any other materials that you prepared for the Surgeon  
15 General's Report? And what I'm making specific reference  
16 to, Doctor, is you mentioned before you did a critique at  
17 the request of LeMaistre, I guess it was.

18          A.     Yes, it was.

19          Q.     You did prepare something for the Office on  
20 Smoking and Health with connection with that critique,  
21 did you not?

22          A.     No, I did not.

23          Q.     So, that critique was not produced by you for  
24 the Office on Smoking and Health?

25          A.     No, it was not.

1 Q. Who was it produced for?

2 A. It was produced for Dr. Newell and Dr.  
3 LeMaistre.

4 Q. Did Dr. Newell or Dr. LeMaistre tell you what  
5 they did with your critique?

6 A. Yes.

7 Q. What did they do with your critique?

8 A. They sent it to the Office on Smoking and  
9 Health.

10 Q. So, the document that you prepared, the  
11 critique, did get to the Office on Smoking and Health?

12 A. In part or in whole. I don't know that they  
13 sent the whole document. I was not privy to the package  
14 they sent.

15 Q. Do you know if the Office on Smoking and Health  
16 reviewed your critique?

17 A. Yes, I know that they must have reviewed part  
18 of it.

19 Q. How do you know that?

20 A. Because I was informed of that by the editors.

21 Q. What else did the editors tell you when they  
22 told you that they reviewed part of your critique, if not  
23 the whole critique?

24 A. They told me that it was very useful.

25 Q. So, your critique, which you do not have today,

1 was part of the documents that was very useful in  
2 creating the 1988 Surgeon General's Report on nicotine  
3 addiction; is that correct?

4 A. I expect, given that they said that to me, it  
5 must have been useful.

6 Q. You don't have that report today, do you?

7 A. I do not have that report.

8 Q. Do you have any drafts or tapes, your dictation  
9 tape, perhaps, of that critique?

10 A. I do not have that.

11 Q. And you don't know if that critique is housed  
12 in a file named John Grabowski sitting in the Office on  
13 Smoking and Health, do you?

14 A. I do not know.

15 Q. Doctor, Number 2 says all documents relating to  
16 the material John Grabowski prepared for the 1988 Surgeon  
17 General's Report; and that would be, of course, any other  
18 materials that you prepared but did not send. Were there  
19 such materials?

20 A. No, there were not.

21 Q. Number 3 requests all communications by or  
22 between the plaintiffs and John Grabowski reflecting,  
23 referring, or pertaining to the material John Grabowski  
24 prepared for the 1988 Surgeon General's Report.

25 Were there any communications by or between the

1 plaintiffs and you with respect to the material you  
2 prepared for the Surgeon General's Report?

3 A. With respect to the -- I'm sorry, the  
4 plaintiffs?

5 Q. Yes, any communications between you and the  
6 plaintiff that were pertaining to the material you  
7 prepared.

8 MR. ALLEN: Or their lawyer.

9 Q. (By Mr. Sheffler) The plaintiffs in this case  
10 include the counsel for the plaintiffs, Mr. McCabe and  
11 his firm.

12 A. We had both telephone conversations, and I  
13 wrote some letters. I really don't recall the content of  
14 all of those.

15 Q. Did you search your files for those letters?

16 A. Yes, I did. I did not -- the ones that I found  
17 did not have reference to the Surgeon General's Report.

18 Q. Did it pertain, refer, or reflect the materials  
19 that you prepared for the Surgeon General's Report?

20 A. Except that which you've already brought up.

21 Q. Other than Exhibit Number 1, there was nothing  
22 that you wrote to Mr. McCabe that referred or reflected  
23 or pertained to the Surgeon General's Report?

24 A. No. I don't wish to be unresponsive. I  
25 think -- I'm sure this was discussed at one time or

1 another. It was not a major issue in my life.

2 Q. Did Dr. Henningfield tell you how he came to  
3 ask you to contribute to the report?

4 A. It was -- no, he did not.

5 Q. Did you come to find out how it was that you  
6 were asked to contribute to the report?

7 A. I know how that works.

8 Q. Well, why don't you tell us how it works.

9 A. There were, as I think you were aware, there  
10 were four scientific editors: Dr. Benowitz, Lando,  
11 Grunberg, and Henningfield. And then there were the  
12 various people and various institutes who made up  
13 subcommittees determining who would contribute. And  
14 ultimately those people made up a list of possible  
15 contributors. And the editors, as far as I know -- and I  
16 don't know this to be. I do know for a fact that Jack  
17 Henningfield, Dr. Henningfield, called me and asked me if  
18 I would be willing to contribute.

19 Q. Was there any discussion with you and Dr.  
20 Henningfield on the subject matter of your submission?

21 A. Yes.

22 Q. Could you tell us what that discussion  
23 consisted of?

24 A. Conditioning factors in drug dependence and  
25 nicotine dependency, in particular.

reviewers may have done the same thing to other manuscripts submitted to the Surgeon General's Report?

A. As I expect that that's what the process is supposed to achieve.

Q. In fact, Doctor, isn't it true that each of the manuscripts submitted by you and all the other authors of the portions of the Surgeon General's Report were given out to at least 11 different reviewers or critiquers? Isn't that true?

A. They were given out to a substantial number, presumably at least 11.

Q. Let's go through, Doctor, if you would, the procedures in a little detail and see if we can make some sense out of this. If you would, turn to Page 5 in your Surgeon General's Report there and maybe we can just answer a few of these questions that I have from reading this.

Paragraph 2 states, "The scientific content of this report reflects the contributions of more than 50 scientists representing a wide variety of relevant disciplines. These experts known for their understanding of and work in specific content areas prepared manuscripts for incorporation into this report."

That includes you; is that correct?

A. Yes.



1           Q.     Let me rephrase that then. You made reason and  
2     scientific judgments about the content of the material  
3     that you were reviewing, did you not?

4           A.     Yes.

5           Q.     You made determinations of whether the data  
6     supported the opinions expressed in the papers you  
7     reviewed; is that correct?

8           A.     Supported the results sections as described.

9           Q.     And supported the discussion sections?

10          A.     Uh-huh.

11                   MR. ALLEN: Is that "yes?"

12          A.     Yes.

13          Q.     (By Mr. Sheffler) And, therefore, you did make  
14     judgments about the materials that you reviewed for  
15     incorporation in your report?

16          A.     That was the purpose of a review of this sort.

17          Q.     And, in fact, therefore, this paper reflects  
18     your judgments about the literature that you analyzed and  
19     reviewed?

20          A.     Yes.

21          Q.     And you whittled the vast amount of literature  
22     that you reviewed down to 15 or 20 pages?

23          A.     Yes.

24          Q.     Which you expressed to the Surgeon General as  
25     the best understanding of this issue; is that correct?

1 A. Yes.

2 Q. That's John Grabowski's understanding?

3 A. Yes.

4 Q. And others may disagree with that  
5 understanding?

6 A. Yes, they may.

7 Q. And there may be, in fact, people listed as  
8 reviewers of the Surgeon General's Report who may have  
9 disagreed with your paper; is that true?

10 A. That's possible.

11 Q. Doctor, do you have any reason to believe that  
12 it is not true?

13 A. Well, the difficulty I have with your  
14 statement, your question, is that since a substantial  
15 portion appears in the report and since there were  
16 however many editors and reviewers and overviews and  
17 seers who looked at it, there must have been substantial  
18 agreement about appropriateness of that content as  
19 representing the existing literature.

20 Q. Doctor, there may have been substantial  
21 agreement about substantial parts of your report. Does  
22 that preclude that there was disagreement about parts of  
23 your report?

24 A. No, it does not.

25 Q. Does that preclude that certain reviewers of

1 the 11 critiqued your report and found major problems  
2 with it?

3 A. It does not preclude that possibility.

4 Q. Isn't it possible, sir, that there were a  
5 number of critiques of your report that were not  
6 incorporated in the final document?

7 A. You're asking if the critiques were  
8 incorporated or not incorporated?

9 Q. I'm asking you, sir, are all critiques  
10 incorporated in the final document?

11 A. One does not include critiques in the document.

12 Q. So, there is no way for you to know whether 1,  
13 2, 10, or 11 of the reviewers of your manuscript found  
14 major criticisms with it. You don't know; isn't that  
15 right?

16 A. Based on what was presented of the material  
17 that I wrote, I assume that the criticisms were few and  
18 modest.

19 Q. You assume that, Doctor, based on the fact that  
20 your --

21 A. It was published.

22 Q. -- a large part of your stuff was published?

23 A. That's right.

24 Q. But that doesn't preclude the fact that there  
25 may have been many who said John Grabowski's paper makes

1 no sense --

2 A. That's right.

3 Q. -- and doesn't confirm and let's not publish it  
4 and Jack Henningfield says we're going to publish it.  
5 Could that scenario happen?

6 A. Actually, no.

7 Q. And why not?

8 A. Because Jack Henningfield did not have  
9 control -- total control of that. There were a number of  
10 people involved in that review process.

11 Q. Let's go on with the review process. After the  
12 draft chapters were created by the Office on Smoking and  
13 Health incorporating your manuscript, they were reviewed  
14 by 11 outside reviewers, 11 outside experts?

15 A. If I may comment.

16 Q. Is that correct?

17 A. If I may comment, the original draft chapters  
18 were made up of the contributions of the four editors  
19 plus the other people involved.

20 Q. Okay. But, in any event, those draft chapters  
21 included portions, at least, of your submission?

22 A. Yes.

23 Q. And that draft chapter incorporated your --

24 MR. ALLEN: You need to let him finish  
25 his question because it's getting all

1                   stepped over. You need to get an answer.

2           Q.     (By Mr. Sheffler) The draft chapters then were  
3 reviewed by 11 experts, and those comments of those  
4 reviewers were given back to the editors who then revised  
5 and created another document; isn't that right?

6           A.     That's my understanding.

7           Q.     Those editors would then have in their hands 11  
8 different critiques; and they would accept, reject,  
9 modify, or whatever they wanted to do with those  
10 critiques and your manuscript. Is that true?

11          A.     Yes.

12          Q.     Now, the revised report then was subjected to  
13 further review by 20 more distinguished scientists from  
14 the Federal Government or outside the Federal Government;  
15 isn't that right?

16          A.     That's what it says on Page 5 of the documents.

17          Q.     And those 20 distinguished Federal Government  
18 scientists or outside scientists would review the  
19 documents incorporating your paper and say, "We think  
20 this is good. We think this is bad. Change this, change  
21 that;" is that true?

22          A.     That's true.

23          Q.     Criticizing?

24          A.     Yes.

25          Q.     Did you see any of those critiques?

1           A.     No, I did not.

2           Q.     Did you see any critiques by the 11 reviewers?

3           A.     No, I did not.

4           Q.     Did you see any critiques by the editors or  
5     what the editors' revisions were in respect -- in light  
6     of the reviewers? Let me strike that. That's a little  
7     bit gobbly-gook.

8           A.     No, it makes sense.

9           Q.     Did you see any revisions by the editors of  
10    your proposed submission?

11          A.     I looked at the material only briefly, and I  
12    found that the portions I glanced at roughly reflected  
13    what I had written.

14          Q.     The final report?

15          A.     Yes.

16          Q.     But you didn't see any earlier revisions?

17          A.     No, I did not.

18          Q.     Now, Doctor, as you sit here today, do you know  
19    whether those critiques of your paper and those reviews  
20    by the editors are housed at the Office on Smoking and  
21    Health?

22          A.     I do not know.

23          Q.     You don't know if it's in that John Grabowski  
24    file sitting up in there in a file cabinet?

25          A.     I do not know.

1 Q. Would you be interested in finding out what the  
2 critiques and reviews said about your papers, Doctor?

3 A. I would comment that since much of this  
4 material had been written in the past I've had the  
5 prior exposure of critiques. So, I know what the  
6 critiques looked like or critiques of other things I've  
7 written.

8 And as far as I'm concerned, I wrote it, it's  
9 gone, it's done. It was interesting. I assume that  
10 those portions that they omitted were, perhaps, if they  
11 omitted anything, that that was omitted due to critique  
12 or due to overlap with other people. I don't know.

13 Q. You don't know.

14 A. I'm simply not in the position to know.

15 Q. Doctor, in your letter to Mr. McCabe of  
16 December 1 -- let's mark this as an exhibit.

17

18 (Defendants' Exhibit No. 4 marked)

19

20 Q. (By Mr. Sheffler) In your letter to Mr. McCabe  
21 of December 1, which is marked as Defense Exhibit Number  
22 4, you state that you were going to rely on your material  
23 submitted to the Surgeon General and also on the Surgeon  
24 General Report itself; is that correct?

25 A. I recall writing that letter, yes.

1           Q.     And do you intend to rely on the Surgeon  
2     General's Report and the material you submitted to the  
3     Surgeon General for your testimony in this trial?

4           A.     I intend to rely on the Surgeon General Report;  
5     and, as I recall, there was another article cited in this  
6     which was the Benowitz's article.

7           Q.     Doctor, before you stated that the Surgeon  
8     General's Report was a unique document and unlike other  
9     scientific reviews of literature. Do you recall that?

10          A.     I did not say "unique." I did say it was, that  
11     and other documents like it which are written for that  
12     purpose as reports of that sort, are unusual.

13          Q.     Reports of this sort, Doctor, are written for  
14     what purpose?

15          A.     These reports -- and I would note when I say  
16     "these reports" I believe all institutes have similar  
17     reports they submit to Congress. If not in title as  
18     reports of the Surgeon General, I know that there is, for  
19     example, a triennial report of various institutes of the  
20     ADAMHA. I think they are probably reviewed in some sense  
21     by more people and with greater rigor than anything in  
22     the scientific literature.

23          Q.     Would you agree, Doctor, that the Surgeon  
24     General's Report presents certain conclusions about the  
25     literature on smoking and, quote, nicotine addiction,



1 unquote?

2 A. Conclusions?

3 Q. Yes.

4 A. Yes.

5 Q. And would you agree, Doctor, that those  
6 conclusions are presented in a very forceful manner?

7 A. No.

8 Q. In your opinion, Doctor, do the conclusions  
9 expressed in the Surgeon General's Report on, quote,  
10 nicotine addiction, unquote, would they be persuasive to  
11 the general public?

12 A. They might be.

13 Q. Well, was it the intent of the report to  
14 present its conclusions in a way that the general public  
15 could understand?

16 A. It's a report to Congress, as I understand it,  
17 by the Surgeon General. So, I assume it was for the  
18 Surgeon General to submit to the Congress for Congress to  
19 understand.

20 Q. Was the report publicly distributed? Do you  
21 know, Doctor?

22 A. Yes.

23 Q. Was there a press conference caused at its  
24 distribution?

25 A. Yes.

1 Q. Was there television broadcast about the  
2 Surgeon General and his report?

3 A. Yes.

4 Q. Were the conclusions stated in newspapers from  
5 across the land?

6 A. I believe so.

7 Q. Was it the intent of the Office on Smoking and  
8 Health and the Surgeon General to make this a public  
9 document?

10 A. I would guess, based on those data, that was  
11 the intent.

12 Q. Would you also guess that it was the hope of  
13 the U. S. Public Health Service that the Surgeon General  
14 report would assist it in its goal of reducing tobacco  
15 use in society?

16 A. Was the goal of whom?

17 Q. U. S. Public Health Service.

18 A. Public Health Service is an entity, an  
19 organization. Surgeon General?

20 Q. Well, in the forward to the Surgeon General's  
21 report it states that, "We hope that this report --  
22 referring to the Surgeon General Report -- will assist  
23 the health care community, volunteer health agencies, and  
24 the Nation's schools in working with us to reduce tobacco  
25 use in our society."

1 A. What page are you on?

2 Q. I'm on Page ii. It's the forward, last  
3 sentence.

4 A. That's right. That's written by Robert Windom,  
5 Assistant Secretary for Health.

6 Q. Now, would you agree, then, that one of the  
7 goals of the U. S. Public Health Service is that this  
8 report would assist in reducing tobacco use in our  
9 society?

10 A. I would agree that the people in the Public  
11 Health Service have that as one of their public health  
12 goals.

13 Q. And the Office on Smoking and Health, the  
14 authors of this report, are part of the Public Health  
15 Service, are they not?

16 A. The authors of this report, no.

17 Q. This report emanated as a result of the Surgeon  
18 General's convening certain people to draft a document;  
19 is that true?

20 A. Yes.

21 Q. And the Surgeon General is --

22 MR. McCABE: Counselor, you're so far  
23 beyond the scope of this deposition it's not  
24 even funny.

25 The purpose of this deposition is to

1 find out what he gave and what he got back  
2 from the Surgeon General's Report. You have  
3 been off of that for 20 minutes, and you're  
4 about to lose your witness.

5 MR. SHEFFLER: Now, isn't the purpose of  
6 this deposition the reliance upon which this  
7 witness will make on documents that you have  
8 tried to prevent us from getting?

9 MR. McCABE: No.

10 MR. SHEFFLER: Okay.

11 MR. McCABE: You're about to lose your  
12 witness.

13 Q. (By Mr. Sheffler) Doctor, isn't it true that  
14 the Public Health Service has certain aims that it wishes  
15 to achieve through the Surgeon General's Report?

16 MR. McCABE: Don't answer the question.  
17 Doctor, at my request would you, please, not  
18 answer these questions.

19 This is for the purpose of your  
20 deposition in general, and they are not  
21 going to take two shots at you. They can  
22 ask you these questions when you are  
23 tendered for the purpose of rendering your  
24 opinion and the basis of your opinion.

25 At this point we're going into the

1 narrow purpose of telling these people what  
2 you submitted and what you got back. And  
3 I'm requesting you as my witness not to go  
4 beyond that, and I will be the judge of  
5 whether or not they go beyond that.

6 Q. (By Mr. Sheffler) Doctor, you mentioned in your  
7 testimony in response to Mr. McCabe's questions you were  
8 involved in other Surgeon General Reports.

9 A. Yes, sir.

10 Q. What reports?

11 A. I don't recall the precise years. It was  
12 probably the '84 report, '85, '83. There were a series  
13 of meetings about various reports, and I was involved in  
14 some of those.

15 Q. You were involved as an editors of those  
16 reports, Doctor?

17 A. I was involved as a member of subcommittees  
18 that were formed by people that were several orders --  
19 or one order removed from editors. I should note there  
20 were committees on advisory groups on smoking and health  
21 for the Public Health Service, and I was the  
22 representative of the institute with which I worked on  
23 those committees.

24 Q. What was the subject of the committees that you  
25 were on? What subjects were you looking at?

1           A.     There were large committees on smoking and  
2 health at which there were representatives of many  
3 agencies and many institutes. There were subcommittees  
4 of -- there were smaller committees that specifically  
5 addressed the Surgeon General's Reports. Typically  
6 the ones that I was asked to be involved with were the  
7 ones on drug dependence or nicotine addiction, if you  
8 will.

9           Q.     You were not then an editor on --

10          A.     I was not an editor. I was not an editor as  
11 defined by the frontis piece of this document of the four  
12 people listed or however many they have.

13          Q.     Doctor, you have some other documents there in  
14 front of you. Do any of those relate to your work for  
15 the Office on Smoking and Health with the Surgeon  
16 General's Report?

17          A.     In this folder?

18          Q.     Yes. What do you have there? Do you have any  
19 objections if we see it?

20          A.     The material is actually duplicates of some  
21 things you have there already.

22          Q.     I think it will be shorter if you show it to  
23 me, and I can tell you whether we've seen it or not.

24          A.     This was about a study I was doing. It's  
25 different. It's just on that file.

1 MR. ALLEN: For purpose of the record, I  
2 want to reflect Dr. Grabowski brought with  
3 him today two manila folders of materials  
4 that, obviously, he feels are relevant in  
5 response to the subpoena. And him and Mr.  
6 McCabe are going over them, and I think we  
7 need to see them.

8 THE WITNESS: Actually, if I may say so,  
9 you're incorrect.

10 MR. ALLEN: He's got two file folders and  
11 him and Mr. McCabe are looking at it and  
12 Mr. McCabe is not the judge and we're  
13 entitled to see them.

14  
15 (Discussion off the record)

16  
17 Q. (By Mr. Sheffler) Doctor, why don't we see  
18 what's in your files that you have brought to your  
19 deposition today.

20 MR. McCABE: Give them whatever they  
21 have in response to their request, and they  
22 get nothing else.

23 A. Well, may I tell you what I have here?

24 Q. (By Mr. Sheffler) Sure.

25 A. I have a letter to Mr. McCabe about -- you have

1       this letter.

2           Q.     Well, then, let's see it.

3           A.     I think you showed it to me actually.  It's a  
4       17 December '87 letter.  I have another copy of -- in  
5       fact, the copy from which your document was Xeroxed, the  
6       original of what you have there.

7           Q.     Let's take a look at it.

8           A.     Look, I gave you a copy of this already.  Okay?

9           Q.     Okay.

10          A.     See, it says "original."  My secretary wrote  
11       that.  I have some Xerox materials from the Surgeon  
12       General's Report that I happened to be reading which was  
13       in the same folder and the preface or the preliminary  
14       chapter to the 1989 Surgeon General's Report and two  
15       empty manila folders and one letter.

16          Q.     Can we see the letter?

17          A.     I'm retentive.

18                   MR. McCABE:  Don't give it to them.

19          A.     It's my letter.  It has to be --

20          Q.     To?

21                   MR. McCABE:  Put it in the file, and  
22                   we're done with this portion of the  
23                   deposition.

24          Q.     (By Mr. Sheffler) Your letter to Mr. McCabe?

25                   MR. McCABE:  We're done with that



1                   portion of the deposition.

2                   Does that respond to their request for  
3                   production of the documents to you?

4                   THE WITNESS: In the preparation of  
5                   materials for the Surgeon General's Report?

6                   MR. McCABE: Yes.

7                   THE WITNESS: No.

8                   Q.     (By Mr. Sheffler) Doctor, was that included in  
9                   your files that you brought with you here today with  
10                  respect to --

11                  A.     No.

12                  Q.     -- your work on the Office on Smoking and  
13                  Health for this case?

14                  A.     It is not -- it was not involved in the  
15                  preparation of materials for the Surgeon General's  
16                  Report.

17                  Q.     Was it communication with Mr. McCabe?

18                  A.     No.

19                  Q.     Doctor, did you bring that letter with you with  
20                  these other documents to this deposition today --

21                  A.     It was not in response to your request. I  
22                  printed some materials from a diskette, and this slipped  
23                  in with them. And there is some other things I have  
24                  upstairs that aren't related.

25                  Q.     It has nothing to do with your testimony in

1       this case or your opinions in this case on the Office on  
2       Smoking and Health and nicotine addiction?

3           A.     It has to do with a study I'm doing in  
4       Louisiana.

5           Q.     Currently?

6           A.     We're trying. We're trying.

7           Q.     Doctor, one of the things you produced to us  
8       here today is entitled "Reducing the Health Consequences  
9       of Smoking: 25 Years of Progress; A Report of the  
10      Surgeon General 1989," Pages 1 through 33.

11                   MR. SHEFFLER: Let's mark this  
12                   Defendants' Number 5.

13  
14                   (Defendants' Exhibit No. 5 marked)

15  
16           Q.     (By Mr. Sheffler) I hand you Exhibit Number 5.  
17       Doctor, were you involved at all in the Surgeon General  
18       Report of 1989?

19           A.     No, I was not.

20           Q.     Did you make any submissions?

21           A.     No, I did not.

22           Q.     You did not edit or review any of the material?

23           A.     No, I did not.

24           Q.     Does this document relate to materials you  
25       produced for the 1988 report?



1           Q.     (By Mr. Sheffler) Let me ask you, Doctor, is  
2     the section here, Pages 450 to 564 or 5, does that  
3     section include any materials that you wrote for the  
4     Surgeon General?

5           A.     I really am not sure if it does or not. Would  
6     you like to know the reason this has been Xeroxed?

7           Q.     Yes.

8           A.     I was a consultant on a study, a pharmacologic  
9     product, for smoking cessation; and I Xeroxed this before  
10    I went out to the meeting in San Francisco so I could  
11    review that material.

12          Q.     Does that work relate, in whole or in part, to  
13    the document you prepared for the Office on Smoking and  
14    Health?

15          A.     This is material from the Surgeon General's  
16    Report.

17          Q.     Does it --

18          A.     It may have -- let me look at some things. It  
19    may have in it sentences that I wrote since, apparently,  
20    some of what I wrote was distributed throughout the  
21    report.

22                 As we have already discussed, the bulk of what  
23    I wrote is around Page 305. Since this is Page 466 and  
24    it was specifically related to issues in treatment, no, I  
25    did not -- this was not my submission.

1 MR. SHEFFLER: Can we mark this as 7.

2  
3 (Defendants' Exhibit No. 7 marked)

4  
5 Q. (By Mr. Sheffler) Doctor, let me show you what  
6 is an unsigned letter dated October 4, 1988, to Roger S.  
7 McCabe. Is that a letter you produced today?

8 A. A letter that I gave to you today?

9 Q. Yes.

10 A. Yes.

11 Q. Doctor, did you send that letter to Mr. McCabe?

12 A. Yes, I did.

13 Q. This is a carbon of the letter you sent to Mr.  
14 McCabe then?

15 A. It's printed out from a diskette, yes.

16 Q. Now, you state in the first sentence that you  
17 have reviewed the request -- this is October 4, 1988 --  
18 "and determined that I have rough copies of the materials  
19 you requested." What was the request? Do you recall?

20 A. I believe we went through this before. It was  
21 some material for the American Psychological Association  
22 meeting at which I presented a paper in 1988, summer of  
23 '88, New York, August.

24 Q. And the material submitted for inclusion of the  
25 Surgeon General's Report, was that included in that rough

1       copies you were talking about?

2           A.     I believe that what -- well, I had a rough copy  
3       of the material from the presentation, as I said; and I  
4       submitted also the material which I have now submitted to  
5       you in duplicate, I believe.

6           Q.     Defendants' Exhibit Number 3?

7           A.     Yes, "Conditioning Factors as Determinants of  
8       Relapse to Tobacco Use."

9           Q.     Is this a rough copy, Doctor?

10          A.     No. That was the final copy.

11          Q.     So, when you were talking about rough copies,  
12       you were referring only to the paper that you gave in  
13       the summer; you weren't referring to the Surgeon  
14       General's --

15          A.     This material that we have looked at several  
16       times today was the final copy that was submitted to the  
17       Surgeon General's Report. It is the same material to  
18       which I refer here. You can call it rough; you can call  
19       it final. It was, for my purpose for the Surgeon  
20       General's Report, it was final and, indeed, the only  
21       iteration at that.

22          Q.     So, there was no other draft?

23          A.     There was not another copy.

24          Q.     This is what you submitted to Mr. McCabe?

25          A.     Yes.

1 Q. Right?

2 A. That's correct.

3 MR. SHEFFLER: Let's mark this as  
4 Exhibit Number 8.

5  
6 (Defendants' Exhibit No. 8 marked)

7  
8 Q. (By Mr. Sheffler) Let me show you what's been  
9 marked Defendants' Exhibit Number 8 and ask you to  
10 identify that for the record.

11 A. It's a letter that I submitted to Mr. McCabe  
12 on December 17, 1987; and, as I recall and as I can  
13 see, it briefly summarizes some issues about tobacco  
14 dependence.

15 Q. Doctor, give us just a couple of minutes; and I  
16 think we're just about done.

17 A. I'm having a wonderful time. Thank you.

18  
19 (Discussion off the record)

20  
21 Q. (By Mr. Sheffler) Doctor, just a couple more  
22 questions. You mentioned, Doctor, that a request was  
23 made in the fall of '88 by defendants for certain  
24 documents made through Mr. McCabe. Do you recall that?

25 A. Yes.

1 Q. What exactly did Mr. McCabe tell you the  
2 defendants requested?

3 A. There was a request for some -- for that  
4 material that I ultimately sent out.

5 Q. And "that material" is Defendants' Exhibit 3?

6 A. No. It's whatever I said in the letter. I'm  
7 simply not sure, frankly, who had asked for this segment  
8 for the Surgeon General's Report. I recall that there  
9 was a request. It seemed to me, as I recall this, that  
10 the request for the presentation from the American  
11 Psychological Association meeting was made by the  
12 defendants.

13 Q. Now, finally, Doctor, let me ask you if you  
14 have any documents concerning reporting or recording any  
15 of the proceedings, discussions, or debates of any  
16 Advisory Committee or any group of Advisory Committee  
17 members or any other person who submitted or otherwise  
18 communicated a review, revision, of any section, chapter,  
19 or part of the 1988 Surgeon General's Report.

20 A. No, I do not.

21 Q. Do you have any documents concerning,  
22 reporting, or recording any communications among any  
23 members of any Advisory Committee with respect to the  
24 1988 Surgeon General's Report?

25 A. No, I do not.



1 Q. Do you have any documents constituting,  
2 concerning, reporting, or recording any communications  
3 from or to any of the following persons with respect to  
4 the 1988 Surgeon General's Report or any portion or  
5 draft: The secretary of Health and Human Services?

6 A. No.

7 Q. Assistant Secretary of Health and Human  
8 Services?

9 A. No.

10 Q. Surgeon General?

11 A. No.

12 Q. The Director of the Office on Smoking and  
13 Health or any member of the Advisory Committee thereto?

14 A. May I clarify? You're asking if I have these  
15 documents from any of those people in my files?

16 Q. That's right.

17 A. No, I don't.

18 Q. Do you have access to them?

19 A. No. I did not receive letters from these  
20 people. There was a letter. There was a letter, a thank  
21 you, I think, at one point from Ron Davis.

22 Q. Ron Davis?

23 A. But, actually, I think that's up on my desk.  
24 It was obviously a form letter that everyone who ever  
25 participated in the process got.

1 Q. Do you have any documents reporting or  
2 recording any communications with any of the authors of  
3 the Surgeon General Report? By that I mean Dr.  
4 Henningfield, Benowitz.

5 A. The editors? No, I don't.

6 Q. Do you have any correspondence, letters,  
7 documents between you and any of the authors of sections  
8 or portions of the Surgeon General's Report?

9 A. No, I do not.

10 Q. Do you have any documents that were cited as  
11 references by you or by anyone else writing for the  
12 Surgeon General's Report that have not been previously  
13 made public?

14 A. I have references. I have material, all of  
15 which is in the public domain. The letter -- or the  
16 articles that I cited are all in the public domain.  
17 That's scientific literature.

18 Q. All the material you cited --

19 A. Are in the public domain. There is nothing I  
20 have that is not available elsewhere.

21 Q. There is nothing repressed, for example?

22 A. No.

23 Q. There is nothing that is held from review  
24 because of some confidentiality?

25 A. No.

1 Q. Do you have any documents constituting  
2 material, communication John Grabowski prepared or sent  
3 to or received from any peer reviewers, senior reviewers,  
4 editors, VIP viewers, or any Advisory Committee of the  
5 1988 Surgeon General Report or any drafts thereof?

6 A. No.

7 Q. And have you produced today all documents  
8 reviewed, written, or prepared by you in connection with  
9 the preparation of the 1988 Surgeon General's Report,  
10 including, but not limited to, material that you  
11 prepared, wrote, or reviewed but did not send?

12 A. You have all the existing material that I  
13 presented to them.

14 Q. Except for your critique of the portion of the  
15 materials that was sent via LeMaistre?

16 A. Yes, I'm sorry. I do not have that.

17 MR. SHEFFLER: I think that's it. Thank  
18 you very much.

19

20 RE-EXAMINATION BY MR. McCABE:

21 Q. Doctor, if you went to Washington and looked in  
22 the file cabinets to see what they had that you  
23 submitted, what would you expect to find?

24 MR. SHEFFLER: Objection. Speculative.

25 He already testified he doesn't know.

1           A.       I would not expect to find any of this.

2                   MR. McCABE:  No further questions.

3                   MR. SHEFFLER:  Thank you.

4                   MR. McCABE:  We do not want to read and  
5                   sign.

6

7                   (Deposition concluded at 3:40 p.m.)

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NO. E-122878

\*\*\*\*\*  
 JEANNIE GRINNELL, \* IN THE DISTRICT COURT OF  
 INDIVIDUALLY AND AS \*  
 INDEPENDENT EXECUTRIX OF \*  
 THE ESTATE OF WILEY \*  
 GRINNELL, JR., WILEY AND \*  
 FRANCES GRINNELL, SR., AND \*  
 KEVIN GRINNELL \*  
 \*  
 VS. \* JEFFERSON COUNTY, TEXAS  
 \*  
 THE AMERICAN TOBACCO \*  
 COMPANY, ET AL \* 172ND JUDICIAL DISTRICT  
 \*\*\*\*\*

COURT REPORTER'S CERTIFICATE TO THE DEPOSITION OF

JOHN GRABOWSKI, PhD

I, Joan E. Kregel, Certified Shorthand Reporter in  
 and for the State of Texas, hereby certify pursuant to  
 the Texas Rules of Civil Procedure and/or agreement of  
 the parties present to the following:

That this deposition transcript is a true record of  
 the testimony given by JOHN GRABOWSKI, PhD, April 4,  
 1989, the witness named herein, after said witness was  
 duly sworn by me.

That \$ 237.55 is the charge for the preparation  
 of the completed deposition transcript and any copies of  
 exhibits, charged to Roger S. McCabe, TBA No. 1333550.

That the deposition transcript was not submitted to  
 the witness for examination and signature, examination  
 and signature having been waived by the witness and all

1 parties present.

2 That the original deposition transcript, together  
3 with copies of all exhibits, was forwarded on  
4 4-5-89 to the attorney or party who asked the  
5 first question appearing in the transcript.

6 That pursuant to the information made a part of the  
7 record at the time said testimony was taken, the  
8 following includes all parties of record:

9 MR. ROGER S. McCABE: Attorney for Plaintiffs

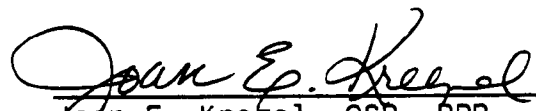
10 MR. BRUCE SHEFFLER: Attorney for American Tobacco  
11 Company

12 MR. SCOTT ALLEN: Attorney for American Tobacco  
13 Company

14 MR. KIP KEVIN LAMB: Attorney for Price & Company

15 That a copy of this certificate was served on all  
16 parties shown herein.

17 Given under my hand and seal of office on this the  
18 9th day of April, 1989.

19  
20  
21   
22 Joan E. Kregel, CSR, RPR  
23 CSR No. 2668  
24 2900 Smith, Suite 104  
Houston, Texas 77006  
(713) 523-3767

25 My Certification Expiration: 12-31-90  
My Notary Commission Expiration: 8-23-92

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AUSTIN, TEXAS

QUENTIN KEITH

(1910-1987)

April 12, 1989

Re: Cause No. E-122,878 in the District  
Court of Jefferson County, Texas;  
Wiley and Jeannie Grinnell vs. The  
American Tobacco Company, Inc., et al

Dr. John Grabowski, Ph.D.  
Department of Psychiatry  
UNIVERSITY OF TEXAS SCHOOL OF MEDICINE  
1300 Moursund  
Houston, TX 77030

Dear Dr. Grabowski:

Enclosed herein for your review is a copy of your  
deposition taken April 4, 1989, in the above-referenced cause.

Sincerely,

*Roger S. McCabe*  
ROGER S. MCCABE  
For the Firm *(ple)*

RSM/pb  
2509M  
Enc.

**LAWYER'S NOTES**

Page Line

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